

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

DEBRA C. GRUNDER,

Plaintiff,

**5:14-cv-550
(GLS/TWD)**

v.

**ELDERWOOD HEALTHCARE AT
BIRCHWOOD,**

Defendant.

SUMMARY ORDER

On April 27, 2015, Magistrate Judge Thérèse Wiley Dancks recommended dismissal of this action without prejudice for failure to prosecute. (Dkt. No. 11.) Pending before the court is a letter filed by plaintiff *pro se* Debra C. Grunder, which the court construes as an objection to Judge Dancks' Report-Recommendation and Order (R&R). (Dkt. No. 12.) For the reasons set forth below, the R&R is rejected.

Grunder's letter expresses her desire to continue on with her action, and includes proof of service of her complaint. (*Id.*) The submission makes no specific argument as to why or how Judge Dancks' recommendation is flawed; instead, Grunder merely asks for forgiveness, offers an explanation for her delay, and provides proof of

service—something she failed to do despite court directives and a warning that her failure to file proof of service or otherwise apprise the court of the status of the action would result in a recommendation of dismissal. (Dkt. Nos. 8, 9, 10, 12 at 1.) Viewing Grunder’s submission liberally, her letter raises, at best, a general objection, which typically triggers review for only clear error. *See Almonte v. N.Y. State Div. of Parole*, No. Civ. 904CV484GLS, 2006 WL 149049, at *6 (N.D.N.Y. Jan. 18, 2006). However, the court always retains discretion to conduct *de novo* review in the interest of justice, *see id.* at *4, which it elects to do here.

As well reasoned as it is, pragmatic considerations compel the rejection of Judge Dancks’ R&R. There is no doubt that Grunder failed to comply with court directives on several prior occasions, but she has now offered an explanation for her delay and submitted a copy of proof of service. (Dkt. No. 12.) Notwithstanding the apparent disconnect between the date that service was purportedly made—December 20, 2014—and the absence of an appearance on behalf of defendant Elderwood Healthcare at Birchwood, this court is satisfied that dismissal for failure to prosecute is

not justified.¹

Accordingly, it is hereby

ORDERED that Judge Dancks' R&R (Dkt. No. 11) is **REJECTED**;

and it is further

ORDERED that the Clerk file the proof of service submitted by Grunder along with her objections; and it is further

ORDERED that the Clerk serve a copy of this Summary Order on Grunder.

IT IS SO ORDERED.

May 29, 2015
Albany, New York



Gary L. Sharpe
Chief Judge
U.S. District Court

¹ The court has made no determination as to the authenticity of the proof of service submitted by Grunder.